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December 17, 2021

**VIA ELECTRONIC FILING**

The Honorable Jocelyn G. Boyd  
Chief Clerk/Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

**Re: Annual Review of Base Rates for Fuel Costs of Duke Energy Progress, LLC  
Docket Number: 2022-1-E**

Dear Ms. Boyd:

I am filing this letter on behalf of Duke Energy Progress, LLC (“DEP” or the “Company”) regarding the procedural schedule in the above-referenced docket. On November 10, 2021, the Public Service Commission of South Carolina (the “Commission”) issued Order No. 2021-750 in Docket No. 2005-83-A, which directed the Clerk’s Office to adjust the procedural schedule and reset the hearing date for DEP’s annual fuel proceeding “to a date prior to Friday, June 10, 2022.” In response to Order No. 2021-750, on December 7, 2021, the Clerk’s Office issued a Notice of Filing and Public Hearing and Prefile Testimony Letter in Docket No. 2022-1-E, setting the following procedural schedule for DEP’s annual fuel proceeding:

Date	Event
Wednesday, April 20, 2022	DEP Direct Testimony
Wednesday, May 18, 2022	ORS/Intervenor Direct Testimony
Wednesday, May 25, 2022	DEP Rebuttal Testimony
Wednesday, June 1, 2022	ORS/Intervenor Surrebuttal Testimony
Monday, June 6, 2022	Hearing

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As explained below, and consistent with the Company's comments and pleadings filed in other dockets, DEP is concerned about the short time frame between the deadline for surrebuttal testimony and the hearing date.

### **Background**

The Commission established the following procedural schedule for DEP's 2022 annual fuel proceeding in Order No. 2021-57, issued on January 29, 2021.

<b>Date</b>	<b>Event</b>
Wednesday, April 27, 2022	DEP Direct Testimony
Wednesday, May 25, 2022	ORS/Intervenor Direct Testimony
Wednesday, June 1, 2022	DEP Rebuttal Testimony
Wednesday, June 8, 2022	ORS/Intervenor Surrebuttal Testimony
Friday, June 10, 2022	Hearing

DEP, along with Duke Energy Carolinas, LLC ("DEC" and together with DEP, the "Companies"), filed a petition for reconsideration of Order No. 2021-57 on February 11, 2021. The Companies argued that the procedural schedules approved by the Commission, which allowed merely one business day between the filing and service of other parties' surrebuttal testimony and the hearing, would compromise the procedural fairness of the proceeding and violate the Companies' due process rights. The Companies further argued that the procedural schedules adopted by Order No. 2021-57 were inconsistent with the Commission's rules, which require motions to be filed ten days before a hearing, and discovery to be served not less than ten days prior to a hearing.

The Commission denied the Companies' petition for reconsideration in Order No. 2021-357, issued on May 18, 2021. However, with respect to surrebuttal testimony, the order states as follows:

Further, the opportunity to present surrebuttal testimony is discretionary with the Commission. Palmetto Alliance, Inc. v. South Carolina Public Service Commission, 282 S.C. 430, 319 S.E.2d 695 (1984). Such testimony should be limited only to new information in the company's rebuttal testimony. Id. The company is required to make its case through its direct testimony and exhibits, and intervenors and other parties are to make their cases through their direct testimony. Rebuttal testimony is where the utility may address or counter issues raised by intervenors and other parties. Rebuttal testimony should be limited and is not the place to make the company's case-in-chief. Therefore, even if surrebuttal is allowed, which would be discretionary with the Commission, the issues raised in

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such testimony should also be limited. For these reasons, we discern no error in this Commission setting limited time between the filing of surrebuttal testimony and the hearing date. The companies should not be prejudiced, and there is no violation of due process rights. In addition, the limited time available for a fuel proceeding just does not allow for the relief requested by the Duke Companies.

Order No. 2021-357.

**Procedural Schedule in Docket No. 2022-1-E**

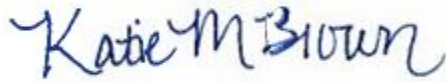
Although the revised procedural schedule issued on December 7, 2021 provides additional time between the deadline for surrebuttal testimony and the hearing, the Company maintains that time is still insufficient. When the deadline for filing surrebuttal is less than 10 days before a hearing, it is impossible to file a written motion or propound discovery in compliance with the Commission's regulations. *See* S.C. Code Ann. Regs. 103-829 & -833. Rules setting deadlines like 103-829 (Motions) and 103-833 (Written Interrogatories and Request for Production of Documents and Things) become meaningless when procedural schedules allow for testimony, such as surrebuttal, to be filed less than ten days prior to the start of a hearing. As a result, instead of focusing on preparing for the hearing to provide the most helpful information to the Commission, the Company is forced to divert its efforts to filing motions to strike. Given that motions are often heard at the start of an evidentiary hearing, neither the parties nor the Commission have the time or forewarning to appropriately consider the merits of the motion being presented. The non-moving party has almost no opportunity to prepare a response or defense. Further, the parties lack meaningful access to the testimony to prepare for Commission questions or conduct cross-examination. This procedure is fundamentally unfair, prejudicial to the parties, and can result in a denial of due process.

The Company recognizes, as the Commission did in Order No. 2021-357, that there is limited time from the beginning of electric fuel proceedings until the date rates go into effect. However, due process demands that the Company be afforded notice and a meaningful opportunity to respond to the testimony presented by other parties. Utilities have a right to understand not only the substance of surrebuttal testimony, but also the underlying basis for the positions articulated therein. The current procedural schedule would (1) significantly restrict the Company's ability to review and understand the surrebuttal testimony itself and (2) prohibit the Company from obtaining discovery regarding its underlying support to be able to properly respond to the case brought by the intervenors.

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The Company appreciates the Commission's attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Katie M. Brown". The signature is written in a cursive, flowing style.

Katie M. Brown

cc: Parties of record